# IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF DELAWARE

NICE SYSTEMS, INC., and NICE SYSTEMS, LTD.,	)
Plaintiffs	, , )
v.	) Civil Action No. 06-311-JJF
WITNESS SYSTEMS, INC.,	)
Defendar	) nt. )

# PLAINTIFFS' PROPOSED FORM OF SPECIAL JURY VERDICT

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Dated: December 3, 2007

We, the jury in the above-titled action, find the following special verdict on the questions submitted to us:

V)	ERD	10	$\mathbf{T}$	RE	$\mathbf{G}\mathbf{A}$	RD	ING	THE	'371	PA	TEN	T
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		O'L LILLINI	•
of U.S. Pater	erally or pursunt No. 5,396,37	ant to the doct 71? (Answer "	erance of the evidence that Witness Systems rine of equivalents, any of the following claims Yes" or "No." A "Yes" answer is a finding for answer is a finding for the defendant, Witness.
	Claim 1	Yes	No
	Claim 8	Yes	No
clear and cor "Yes" or "No	nvincing eviden o." A "Yes" an	nce that Witnes nswer is a find	to any part of Question No. 1, do you find by ss Systems' infringement was willful? (Answering for the plaintiff, NICE, on this issue; a "No" ness Systems on this issue.)
	•	Yes	No
answer is a f	S. Patent No. 5	,396,371 are in defendant Witn	onvincing evidence that any of the following avalid? (Answer "Yes" or "No." A "Yes" ness Systems, on this issue; a "No" answer is a
	Claim 1	Yes	No
	Claim 8	Yes	No
DAMAGES FOR I	NFRINGEMI	ENT OF THE	'371 PATENT
Question No. 1, abor Question No. 3, abor	ve) <u>and</u> (ii) is n ve), then Witne	ot invalid (you ess Systems is:	both (i) is infringed (you answered "Yes" in answered "No" for the same claim number in responsible for damages caused to NICE. occeed to Verdict Regarding the '005 Patent.
Question No. 4: resulting fror "Yes" answe	n Witness Syst	ems' infringen	ntitled to damages equaling NICE's lost profits ment of the patent? (Answer "Yes" or "No." A o" answer is a finding for Witness Systems.)
	Yes	No	

Question No. 5: as a result of	What is the total amount of lost profits damages to which NICE is entitled f Witness Systems' infringement of the patent?
•	Answer:
Question No. 6: of its damag entitled as a	If you find that NICE is not entitled to lost profits damages for some or alles, what is the total amount of reasonable royalty damages to which NICE is result of Witness Systems' infringement of the patent?
	Answer:
VERDICT REGA	RDING THE '005 PATENT
infringed, lit of U.S. Pate	Do you find by a preponderance of the evidence that Witness Systems terally or pursuant to the doctrine of equivalents, any of the following claims nt No. 5,819,005? (Answer "Yes" or "No." A "Yes" answer is a finding for NICE, on this issue; a "No" answer is a finding for the defendant, Witness
	Claim 1 Yes No
	Claim 8 Yes No
clear and cor "Yes" or "N	If your answer was "Yes" to any part of Question No. 7, do you find by nvincing evidence that Witness Systems' infringement was willful? (Answer o." A "Yes" answer is a finding for the plaintiff, NICE, on this issue; a "No" finding for the defendant, Witness Systems on this issue.)
	Yes No
claims of U. answer is a f	Do you find by clear and convincing evidence that any of the following S. Patent No. 5,819,005 are invalid? (Answer "Yes" or "No." A "Yes" inding for the defendant Witness Systems, on this issue; a "No" answer is a the plaintiff, NICE.)
	Claim 1 Yes No
	Claim 8 Yes No
	TATED TATCES ATTATE OF THE CONTROL OF T

#### DAMAGES FOR INFRINGEMENT OF THE '005 PATENT

If you answered that any claim of the '005 Patent <u>both</u> (i) is infringed (you answered "Yes" in Question No. 7, above) <u>and</u> (ii) is not invalid (you answered "No" for the same claim number in Question No. 9, above), then Witness Systems is responsible for damages caused to NICE. Please proceed to the next question. Otherwise proceed to Verdict Regarding the '570 Patent.

resulting from	Witness Sys	stems' infringen	ntitled to damages equaling NICE's lost profits ment of the patent? (Answer "Yes" or "No." A " answer is a finding for Witness Systems.)
	Yes	No	
Question No. 11: as a result of i			lost profits damages to which NICE is entitled
	Answer:	·	
Question No. 12: of its damages entitled as a re	s, what is the	total amount of	entitled to lost profits damages for some or all reasonable royalty damages to which NICE is ringement of the patent?
	Answer:		
VERDICT REGARI	DING THE	'570 PATENT	
infringed, liter of U.S. Patent the plaintiff, N Systems.)	rally or pursu No. 6,249,57 VICE, on this	ant to the doctri 70? (Answer "Y issue; a "No" a	ance of the evidence that Witness Systems ne of equivalents, any of the following claims 'es" or "No." A "Yes" answer is a finding for newer is a finding for the defendant, Witness
•	Claim 6	Yes Yes	No
	Claim 7	Yes	No
clear and conv "Yes" or "No."	rincing evider "A "Yes" aı	nce that Witness nswer is a findir	any part of Question No. 13 do you find by Systems' infringement was willful? (Answer of for the plaintiff, NICE, on this issue; a "No" ess Systems on this issue.)
		Yes	No
Question No. 15: claims of U.S. answer is a fin finding for the	Patent No. 6 ding for the o	,249,570 are inv defendant Witne	nvincing evidence that any of the following valid? (Answer "Yes" or "No." A "Yes" ess Systems, on this issue; a "No" answer is a
	Claim 6	Yes	No
	Claim 7	Yes	No

#### DAMAGES FOR INFRINGEMENT OF THE '570 PATENT

If you answered that any claim of the '570 Patent both (i) is infringed (you answered "Yes" in Question No. 13, above) and (ii) is not invalid (you answered "No" for the same claim number in Question No. 15, above), then Witness Systems is responsible for damages caused to NICE. Please proceed to the next question. Otherwise proceed to Verdict Regarding the '345 Patent.

*	1	F-		or responding the	3 13 1 dtont.
Question No. 16: resulting from "Yes" answer	n Witness Syst	ems' infringer	nent of the pate	ges equaling NIO ent? (Answer "Y finding for Witne	es" or "Ño." A
	Yes	No			
Question No. 17: as a result of	What is the tinfringement of	otal amount of of the patent?	lost profits da	mages to which	NICE is entitled
	Answer:				
	s, what is the t	otal amount of	t entitled to los reasonable ro fringement of t	valty damages to	s for some or all which NICE is
	Answer:	The second secon			
VERDICT REGAR	DING THE '	345 PATENT		·	
of U.S. Paten	erally or pursua t No. 6,728,34.	nt to the doctri 5? (Answer "Y	ine of equivale Yes" or "No."	dence that Witnents, any of the fo A "Yes" answer ing for the defen	llowing claims is a finding for
	Claim 14	Yes	No		
	Claim 40	Yes	No		
	Claim 41	Yes	No		
	Claim 48	Yes	No		
"Yes" or "No	vincing eviden ." A "Yes" an	ce that Witnes swer is a findi	s Systems' infr	uestion No. 19, c ingement was wi tiff, NICE, on th n this issue.)	illful? (Answer
		Yes	No		,

Question No. 21: claims of U.S. answer is a fin finding for the	Patent N ding for	lo. 6,728 the defe	8,345 are invendant Witnes	alid? (Ansv	wer "Yes" or "I	of the following No." A "Yes" "No" answer is a
	Claim 1	14 Y	es	No		
	Claim 4	40 Y	Yes	No		
	Claim 4	41 Y	es	No		•
	Claim 4	18 Y	es	No		
DAMAGES FOR IN	FRINGE	EMENT	OF THE '3	345 PATEN	NT	
If you answered that a Question No. 19, above Question No. 21, above Please proceed to the state of the state	ve) <u>and</u> (inve), then	i) is not Witness	invalid (you Systems is r	answered "esponsible	No" for the sar for damages ca	ne claim number in used to NICE.
resulting from	Witness	Systems	s' infringeme	nt of the pa	tent? (Answer	NICE's lost profits "Yes" or "No." A itness Systems.)
	Yes	_ N	Io			
Question No. 23: as a result of ir				ost profits d	amages to whic	ch NICE is entitled
	Answer:					
	, what is	the total	amount of re	easonable r	oyalty damages	ages for some or all s to which NICE is
,	Answer:					

#### **VERDICT REGARDING THE '372 PATENT**

Question No. 25: Do you find by a preponderance of the evidence that Witness Systems infringed, literally or pursuant to the doctrine of equivalents, any of the following claims of U.S. Patent No. 6,775,372? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiff, NICE, on this issue; a "No" answer is a finding for the defendant, Witness Systems.)

Claim	1	Yes	No
Claim	6	Yes	No
Claim	14	Yes	No
Claim	15	Yes	No
Claim	19	Yes	No
Claim	33	Yes	No

If your answer was "Yes" to any part of Question No. 25 do you find by Question No. 26: clear and convincing evidence that Witness Systems' infringement was willful? (Answer "Yes" or "No." A "Yes" answer is a finding for the plaintiff, NICE, on this issue; a "No" answer is a finding for the defendant, Witness Systems on this issue.)

Yes	No
1 63	140

Question No. 27: Do you find by clear and convincing evidence that any of the following claims of U.S. Patent No.6,775,372 are invalid? (Answer "Yes" or "No." A "Yes" answer is a finding for the defendant Witness Systems, on this issue; a "No" answer is a finding for the plaintiff, NICE.)

Claim 1	Yes	No
Claim 6	Yes	No
Claim 14	Yes	No
Claim 15	Yes	No
Claim 19	Yes	No
Claim 33	Yes	No

## DAMAGES FOR INFRINGEMENT OF THE '372 PATENT

If you answered that any claim of the '372 Patent <u>both</u> (i) is infringed (you answered "Yes" in Question No. 25, above) <u>and</u> (ii) is not invalid (you answered "No" for the same claim number in Question No. 27, above), then Witness Systems is responsible for damages caused to NICE. Please proceed to the next question. Otherwise proceed to Verdict Regarding the '370 Patent

resulting from	Witnes	s Syste	ms' infringem	ent of the pate	ent? (Answer	NICE's lost profits "Yes" or "No." A tness Systems.)
	Yes _	<del></del>	No			
Question No. 29: as a result of in				lost profits da	mages to whic	h NICE is entitled
	Answe	r:				
Question No. 30: of its damages entitled on acc	, what i	s the to	tal amount of	reasonable ro	yalty damages	ges for some or all to which NICE is
	Answe	r:		***************************************		
VERDICT REGARI	ING T	'HE '3	70 PATENT			
of U.S. Patent	ally or p No. 6,7	oursuan 85,370°	t to the doctrin? (Answer "Y	ne of equivale es" or "No."	nts, any of the A "Yes" answ	tness Systems following claims er is a finding for endant, Witness
	Claim	1	Yes	No		
	Claim	9	Yes	No		·
	Claim	27	Yes	No		
clear and convi	incing e	vidences" ans	e that Witness wer is a findin fendant, Witne	Systems' infig for the plair ess Systems or	ringement was ntiff, NICE, on	, do you find by willful? (Answer this issue; a "No"
			Yes	No		

	claims of U.S	. Patent ading fo	No.6,78 r the de	85,370 are inva fendant Witne	nvincing evidence that any of the following alid? (Answer "Yes" or "No." A "Yes" ss Systems, on this issue; a "No" answer is a
		Claim	1 ·	Yes	No
		Claim	9	Yes	No
		Claim	27	Yes	No
DAMA	GES FOR IN	IFRING	GEMEN	NT OF THE '	370 PATENT
Questio Questio	n No. 31, abo n No. 33, abo	ve) <u>and</u> ve), thei	(ii) is no n Witne	ot invalid (you ss Systems is i	ooth (i) is infringed (you answered "Yes" in answered "No" for the same claim number in responsible for damages caused to NICE. ceed to Verdict Regarding the '920 Patent
]	resulting from	Witnes	s Systei	ns' infringeme	citled to damages equaling NICE's lost profits ent of the patent? (Answer "Yes" or "No." A answer is a finding for Witness Systems.)
		Yes _		No	
Questio	on No. 35: as a result of i	What is	s the tot nent of	al amount of l the patent?	ost profits damages to which NICE is entitled
		Answe	r:		·
(	of its damages	, what i	s the tot	al amount of r	entitled to lost profits damages for some or all easonable royalty damages to which NICE is ingement of the patent?
		Answe	r:	and the latest and th	·
VERDI	CT REGARI	DING T	'HE '92	0 PATENT	
i C	of U.S. Patent	ally or p No. 6,8	oursuant 70,920?	t to the doctrin ' (Answer "Ye	nce of the evidence that Witness Systems e of equivalents, any of the following claims es" or "No." A "Yes" answer is a finding for swer is a finding for the defendant, Witness
		Claim	1 .	Yes	No
		Claim	3	Yes	No

	Claim 16	Yes	No	
	Claim 18	Yes	No	
	Claim 21	Yes	No	
(Answer "Ye	vincing evidenc s" or "No." A "	e, that Witness 'Yes" answer is	any part of Question No. 37, do you find by Systems' infringement was willful? s a finding for the plaintiff, NICE, on this fendant, Witness Systems on this issue.)	
		Yes	No	
answer is a fin	Patent No.6,87	70,920 are inva fendant Witnes	avincing evidence that any of the following alid? (Answer "Yes" or "No." A "Yes" ss Systems, on this issue; a "No" answer is a	
	Claim 1	Yes	No	
	Claim 3	Yes	No	
	Claim 16	Yes	No	
	Claim 18	Yes	No	
	Claim 21	Yes	No	
DAMAGES FOR IN	NFRINGEMEN	T OF THE '9	O20 PATENT	
If you answered that any claim of the '920 Patent <u>both</u> (i) is infringed (you answered "Yes" in Question No. 37, above) <u>and</u> (ii) is not invalid (you answered "No" for the same claim number in Question No. 39, above), then Witness Systems is responsible for damages caused to NICE. Please proceed to the next question. Otherwise proceed to Verdict Regarding the '109 Patent.				
Question No. 40: resulting from "Yes" answer	ı Witness Syster	ns' infringeme	itled to damages equaling NICE's lost profits ent of the patent? (Answer "Yes" or "No." A answer is a finding for Witness Systems.)	
	Yes	No		
Question No. 41: as a result of i	What is the tot nfringement of	al amount of lother the patent?	ost profits damages to which NICE is entitled	
	Answer:		·	

### DAMAGES FOR INFRINGEMENT OF THE '109 PATENT

Claim 3

Claim 6

If you answered that any claim of the '109 Patent both (i) is infringed (you answered "Yes" in Question No. 43, above) and (ii) is not invalid (you answered "No" for the same claim number in Question No. 45, above), then Witness Systems is responsible for damages caused to NICE. Please proceed to the next question.

Yes \_\_\_ No \_\_\_

Yes \_\_\_ No

	•
Question No. 46: resulting from "Yes" answer	Do you find that NICE is entitled to damages equaling NICE's lost profits a Witness Systems' infringement of the patent? (Answer "Yes" or "No." A is a finding for NICE; a "No" answer is a finding for Witness Systems.)
	Yes No
Question No. 47: as a result of i	What is the total amount of lost profits damages to which NICE is entitled infringement of the patent?
	Answer:
Question No. 48: of its damages entitled as a re-	If you find that NICE is not entitled to lost profits damages for some or all s, what is the total amount of reasonable royalty damages to which NICE is esult of Witness Systems' infringement of the patent?
	Answer:
	Respectfully submitted,
	YOUNG CONAWAY STARGATT & TAYLOR, LLP
	/s/ Melanie K. Sharp
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Dated: December 3, 2007